IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 112 OF 1998.

Somaiya Organo Chemicals Ltd. ... Applicant.

V/s.

The Commissioner of Income-tax. ... Respondent.

P.J.Pardiwala i/b Mulla & Mulla C.B.C.
for the applicant.

Ashok Kotangale with Parag Vyas
for the respondent.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 4th October 2005.

P.C. :

. By this reference under section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in disallowing Rs.28,739/- on account of amount deducted from sales realisation proceeds of spirits towards storage fund for molasses and alcohol account in accordance with Ethyl alcohol (Price Control) Amendment Act, 1971? right in holding that

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in not excluding commission paid to Managing director for the purpose of computing limits u/s.40(c) of the Income-Tax Act, 1961?

. So far as question No.1 is concerned, learned counsel for the parties agreed that the said question has already been answered by the Apex Court in the case of **C.I.T. v. New Horizon Sugar Mills P.Ltd.**, (2004) 269 ITR 397 in favour of assessee. Accordingly, question No.1 is answered in the negative i.e. in favour of assessee and against the Revenue.

. So far as question No.2 is concerned, learned counsel for the parties agreed that this question is covered by the judgment of this Court in the case of **Godavari Sugar Mills Ltd. v. C.I.T.**, (1994) 208 ITR 801 in favour of Revenue. Accordingly, question No.2 is answered in the affirmative i.e. in favour of the Revenue and against the assessee.

. Accordingly, reference stands disposed of with no order as to costs.

(J.P.DEVADHAR, J.) **(V.C.DAGA, J.)**